

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Admiralty Suits No.13 and 15 of 2022

Date	Order with signature of Judge
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Suit No.13/2022

1. For hearing of CMA 3162/22
2. For hearing of CMA 89/23
3. For hearing of CMA 90/23

Suit No.15/2022

1. For hearing of CMA 3265/22

Dated: 25.01.2023

Mr. Mazhar Imtiaz Lari for plaintiff in Adm. Suit No.13/2022 and for defendant No.5 in Suit No.15 of 2022.

Mr. Omair Nisar a/w Mr. Muhammad Ali for plaintiff in Adm. Suit No.15 of 2022.

Mr. Aga Zafar Ahmed for defendants No.1 to 4.

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Mr. Omair Nisar has filed application under order I Rule 10 CPC in Suit No.13 of 2022 in Court today along with his Vakalatnama, which is taken on record. Office is directed to fix this application for orders on the next date. He has also filed counter-affidavit to CMA No.90/2023 on behalf of intervener M/s Pak International Bulk Terminal Ltd., which is taken on record subject to all just legal exceptions as the intervener has not yet made part to these proceedings.

Mr. Mazhar Lari has filed rejoinder to the counter-affidavits of defendants No.1 and 2 to the listed applications in Suit No.13 of 2022, which are taken on record, copies supplied to Aga Zafar Ahmed, learned counsel for defendants.

These are two connected Admiralty suits; one filed by M/s Agro Trade (Pvt.) Ltd. and the other by M/s Pak International Bulk Terminal Ltd. in whose terminal the cargo was discharged. The vessel was arrested in pursuance of order date 13.12.2022. Plaintiff's claim was tentatively assessed to the tune of US \$.1,468,361/- however the question that was left to be decided is the "moisture content" beyond the agreed level of 14% which is to be determined in these proceedings. Faced with such situation, the Court then in terms of the said order reduced the claim to a tentative amount of US \$.1 Million. The security has already been furnished by defendant No.1 with the Nazir of this Court however plaintiff has faced a claim from the terminal with whose

assistance cargo was discharged for which he seeks enhancement of security. This claim is in the connected suit wherein M/s Pak International Bulk Terminal Ltd. claims an amount of Rs.113 Million on account of discharge of subject cargo. It is their claim that such discharge has destroyed the infrastructure including “conveyer belts” etc. meant to discharge the cargo. Mr. Lari submitted that he would not ask for any enhancement of bank guarantee, provided claim of damages of M/s Pak International Bulk Terminal Ltd. in the connected suit be secured. The claim of damages in the connected suit No.15 of 2022 is only a tentative assessment of the plaintiff as invariably the coal does contain water contents and its maximum accepted limit is 14% whereas it varies only 3 to 4% at the most, in terms of report. Considering such facts, infrastructure of the terminal, dealing with such cargo on regular basis ought to have been provided with some additional resistance. The report of the SGS suggests that the water contents exceeds by only 3% approx. If the infrastructure of terminal is so limited to a minimum threshold of permissible water content then their solitary existence as the only cargo discharge terminal, is disturbing for the working capacity of the only terminal dealing with coal. Monopoly is being utilized by minimum infrastructure. Tentatively I am of the view that addition of water contents may have caused destruction to the terminal/conveyor belt of the cargo but the terminal has its own responsibility too to make up for normal wear and tear. Be that as it may, since it is only tentative assessment and we are only at interlocutory stage and the vessel is yet to sail from the jurisdiction of this Court, I am of the view that defendant No.1 may also secure 50% of the amount as claimed in the connected suit by way of a bank guarantee in three days’ time.

At this stage learned counsel for defendants requests for time to seek instructions insofar as time period for furnishing security/bank guarantee is concerned. At his request only for this purpose the matter is adjourned to tomorrow i.e. 26.01.2023 at 11:00 a.m.

Judge